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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ROBERT QUIHUIS,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES et al.,

Defendants and Respondents.

B196367

(Super. Ct. No. BS 096271)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Dzintra J. Janavs, Judge. Affirmed.

Diane Marchant for Plaintiff and Appellant.

Rockard J. Delgadillo, City Attorney, Claudia McGee Henry, Assistant City Attorney, Kim Rodgers Westhoff, Gail D. Peterson and Gerald M. Sato, Deputy City Attorneys, for Defendants and Respondents.

This case is before us on remand from the California Supreme Court. Pursuant to the Court's instructions, we are to vacate our previous opinion in this case and reconsider the cause in light of *Mays v. City of Los Angeles* (2008) 43 Cal.4th 313. We do so and, on reconsideration, affirm the judgment of the superior court.

BACKGROUND

Appellant Robert Quihuis (Quihuis) was a police officer for the City of Los Angeles (City). On November 18, 2003, detectives from the San Bernardino Sheriff's Department responded to a report of domestic violence involving a possible hostage situation. Quihuis, who lived in the vicinity, returned home after running errands to find an unmarked police car parked in front of his garage. Quihuis asked detective Robert Emmerson, who was in the process of conducting interviews, to move the police car blocking his garage. Emmerson told Quihuis that he was conducting police business and that the car would be moved as soon as possible. The detective resumed his interviews. Quihuis interrupted Emmerson two more times and persisted in his requests that the car be moved. Emmerson admitted to cursing at Quihuis in the course of their interactions. When Quihuis indicated to Emmerson that he was a police officer, Emmerson told him that he should know better than to interfere during an investigation. Eventually, the police car blocking Quihuis' garage was moved. Emmerson did not arrest Quihuis.

Quihuis telephoned the San Bernardino Sheriff's Department to complain about Emmerson. Later, on December 4, 2003, San Bernardino detectives faxed a copy of a report regarding the November 18, 2003, incident to the Los Angeles Police Department. The City served a personnel complaint on Quihuis on October 7, 2004, giving him notice of a future hearing before a board of rights on the following charge: "On or about November 18, 2003, you, while off-duty, interfered with an official police investigation."

The board found Quihuis guilty as charged. On January 31, 2005, after hearing testimony regarding the nature and extent of the appropriate penalty to impose, the

board recommended to Chief of Police William Bratton that Quihuis be discharged from his position with the Los Angeles Police Department effective February 24, 2005.

Chief Bratton imposed the recommended penalty in an order signed on March 11, 2005.

On April 19, 2005, Quihuis petitioned the superior court for a peremptory writ of mandate pursuant to Code of Civil Procedure section 1094.5. In his memorandum of points and authorities in support of the petition, one of Quihuis' contentions was that the disciplinary action taken against him was barred by the statute of limitations contained in Government Code section 3304, subdivision (d),¹ because he did not receive notice of the proposed disciplinary action within one year of the City's discovery of the alleged misconduct. In particular, he argued that the personnel complaint, which he did receive before the one-year deadline, did not give him notice of any proposed disciplinary action.

The trial court disagreed, concluding that the personnel complaint gave Quihuis "sufficient notice that he might be discharged." The court also rejected all of Quihuis' other arguments and entered judgment against him on November 28, 2006. Quihuis timely appealed.

DISCUSSION

Quihuis' sole contention on appeal is that the City failed to notify him of its proposed disciplinary action within one year of discovering his alleged misconduct, as required by section 3304, subdivision (d). The Supreme Court has recently held, however, that "[a] notice proposing that alleged misconduct be adjudicated by a [b]oard of [r]ights constitutes sufficient notice of proposed disciplinary action under section 3304(d)." (*Mays v. City of Los Angeles, supra*, 43 Cal.4th at p. 325.) The City served the personnel complaint on Quihuis within one year of discovering his alleged misconduct, and the personnel complaint proposed that the alleged misconduct be adjudicated by a board of rights. Thus, under *Mays* the notice was sufficient.

¹ All subsequent statutory references are to the Government Code.

DISPOSITION

Our previous opinion in this case, filed on January 28, 2008, and modified on February 26, 2008, is vacated. The judgment of the superior court is affirmed. The parties shall bear their own costs of appeal.

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ROTHSCHILD, J.

We concur:

MALLANO, P. J.

JACKSON, J.*

* Associate Justice of the Court of Appeal, Second Appellate District, Division Seven, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.